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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/280,791	03/26/1999	FENG QIN	09019.0058US	6335
23552	7590	09/09/2003		
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				EXAMINER
				PRATT, CHRISTOPHER C
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/280,791	QIN ET AL.	
	Examiner Christopher C Pratt	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 July 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-16,18-21,23,26,29-34,38,40,41 and 45-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-16,18-21,23,26,29-34,38,40-41,45-48,49-54 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendments and accompanying remarks filed 7/7/03 have been entered and carefully considered. Applicant's arguments are found to overcome the 112 indefinite rejection set forth in the previous actions because the addition of extra layers and coatings is not deemed to alter the basic and novel characteristics of applicant's invention according to the meaning associated with the partially closed transitional language "consisting essentially of." Despite this advance, the amendments are not found to patently distinguish the claims over the prior art and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 11-16, 26, 30-31, 33-34, 38, 45-46, and 49-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honeycutt (5207837), as set forth in the previous rejection.

Applicant argues that Honeycutt fails to teach a spunlace process such as hydroentagling. As previously set forth, Honeycutt clearly teaches hydroentagling (col. 3, line 48). Moreover, the examiner notes that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of

production. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). It is the examiner's position that Honeycutt's hydroentagling has the same result as applicant's hydroentagling.

Applicant argues that Honeycutt fails to teach "superior properties including a bursting strength over 50 psi." Applicant has also submitted a declaration attempting to show that a bursting strength of 50psi or greater is an unexpected result.

In the previous final rejection the examiner stated that the claimed property was either inherent or, in the alternative, obvious over Honeycutt. Honeycutt supports a finding of inherency because it teaches all elements of applicant's invention including the process used to make the invention. The examiner again notes that both Honeycutt and the instant invention use the same fiber material, same fiber size and length, and both utilize hydroentagling. Applicant has not provided any evidence or arguments attempting to point out a difference from Honeycutt that would give the instant invention unique properties.

Applicant's declaration also fails to provide a showing of unexpected results because it does not compare the instant invention with the fabric of Honeycutt. Instead it compares the present invention with two commercially available spunlaced, polyvinyl

alcohol fiber fabrics. Therefore, the declaration is not germane to the instant rejection and applicant has not met the burden of showing unexpected results.

Applicant has presented an affidavit showing evidence of commercial success and argues that the commercial success is due to the superior characteristics of the claimed invention. This affidavit is not persuasive of patentability because applicant bears the burden of showing that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight (MPEP 716.03b). Here, applicant has yet to prove that the claimed features of the instant invention are any different from those of Honeycutt. Merely showing that there was commercial success of an invention is not sufficient. Applicant has not met the burden of showing a nexus between sales and the properties of the claimed product because there is no evidence that the commercial success was not due to other factors such as extensive advertising, position as market leader before introduction of the product, or other business events extraneous to the merits of the invention.

4. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honeycutt (5207837) in view of Honeycutt (5885907), as set forth in the previous rejection.

Applicant's traversal of this rejection rests on the arguments set forth above; therefore, said rejection is maintained from the last action.

5. Claims 18-19, 21-22, 29, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honeycutt (5207837) in view of Chen et al (5990377), as set forth in previous actions.

Applicant's traversal of this rejection rests on the arguments set forth above; therefore, said rejection is maintained from the last action.

6. Claims 20 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Honeycutt (5207837) in view of Abe et al (5658915), as set forth in the previous action.

Applicant's traversal of this rejection rests on the arguments set forth above; therefore, said rejection is maintained from the last action.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Christopher C. Pratt  
September 7, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER